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No. 361

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

J. L. KAMSLER,

Petitioner,

vs.

H. A. SEINSCHEIMER CO. of Cincinnati, Ohio,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To The Honorable, The Chief Justice and Associate Justices of The Supreme Court of The United States:

Your petitioner J. L. Kamsler, respectfully prays that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit in the above case.

JUDGMENT AND OPINION OF THE COURTS BELOW

The judgment of the United States District Court for the Northern District of Illinois, Eastern Division was issued on Nov. 30, 1964, and a rehearing denied on Dec. 3, 1964, and is not reported.

The opinion of the United States Court of Appeals for the Seventh Circuit, affirming said Judgment, was filed, June 24, 1965 and is included in the Appendix hereto, and in the certified copy of the record.

QUESTIONS PRESENTED

1. Was it not reversible error that the Federal Court did not take jurisdiction on the grounds of Diversity of Citizenship when it was alleged and proven that Wm. Benzion signed the complaint with the authority of the H. A. Seinscheimer Co. of Cincinnati, Ohio?
2. Was it not reversible error when the courts attention was called to Title 28, Section 1343 giving District Courts original jurisdiction because of a claim of the deprivation of rights, and acts done in furtherance of any conspiracy to deprive such person of his constitutional rights. These facts being alleged in the petitioner's verified complaint?
3. Was it not Prejudicial and Reversible error in the trial court making hasty decisions and reversing itself several times, and finally permitting the Respondent to plead his case on motion denying Petitioner his day in Court and his right to a trial by Jury?
4. Was it not reversible error of the trial court in not following the accepted rules of pleading of Federal Civil Procedure, and permitting the case to go to trial, where it was obvious that the facts alleged when proven would grant recovery?

STATEMENT OF THE CASE

Your petitioner was arrested on a warrant based on a complaint signed by one, William Benzion of Jer:ems Mens Store at 111 N. Wabash Ave. Chicago, Ill. said store being owned 100% by the H. A. Seinscheimer Co. of Cincinnati, Ohio. This complaint was ratified by Officers of the H. A. Seinscheimer Co. of Cincinnati, Ohio, prior to William Benzion signing said warrant. The Basic Facts are as follows:

1. A New Credit man, William Benzion, made an ill advised move in extending credit to some Company.
2. When he found out that he had made a mistake he called Cincinnati, Ohio, to talk with the officers of the Company, and was told to call the police.
3. Sgt. McGlynn of the States Attorney's police who was after the Petitioner ever since said Petitioner had reported him for attempting to extort money from him, came in to see Benzion. Sgt. McGlynn showed him a picture of the Petitioner, told him that he had orders from the top to sign the complaint, which William Benzion did with full authority of the H. A. Seinscheimer Co. officials, and officers.
4. When your petitioner fought the case, the Warrant was Nolle Prossed over the Petitioner's objection. The Petitioner was damaged as well as his family by being held up to public ridicule, mental damages, healthwise, and financial wise, and damages lie for

violation of Petitioner's rights under the 4th, 8th, and 14th, Amendment to the United States Constitution.

5. The Complaint could have been Nolle Prossed immediately when the Petitioner came in to see Benzion and identified himself.

After causing your Petitioner all of these damages, then the officials from the H. A. Seinscheimer Co. ordered the complaint Nolle Prossed.

RULES CONCERNED

Federal Rules of Civil Procedure 8 (a) and 8 (f).

STATUTES CONCERNED

Section 1331 Title 28 United States Code.

Section 1332 Title 28 United States Code.

Section 1343 Title 28 United States Code.

REASONS FOR GRANTING WRIT

1. The Court of Appeals has decided and rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter. Supreme Court Rule # 38, Sec. 5 (b).
2. The Court of Appeals has decided an important Federal Question in a way probably in conflict with applicable decisions of the Supreme Court, of the United States Supreme Court Rule # 38, Sec. 5 (b).
3. The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by a lower court as to call for an exercise of the United States Supreme Court's power of supervision. United States Supreme Court's Rule # 38, Sec. 5 (b).

We shall address ourselves SERIATIM to the preceding numbered reasons, and shall make our presentation as succinctly as possible.

I.

Your Petitioner has shown damages in excess of $10,000.00, and has complied with the good faith necessary to comply with the Federal Rules of Civil Procedure. (P. 6 Petitioners Brief.)

In the case of *Copley* v. *Sweet,* D.C. Mich. 1955, 234 F. 2d 660, the Court said:

> "Under Title 28, Section 1343, giving District Courts original jurisdiction by law, of any suit to be commenced by any person to recover damages because of a deprivation of his rights and privileges as a citizen of the United States, by any act done in furtherance of any conspiracy to deprive such person of his con-

stitutional rights, the District Court has original jurisdiction of the complaint alleging in substance that Defendants conspired together to deprive Plaintiff of rights or privileges or immunities secured to him by the Constitution and Laws of the United States.

Thus, when Petitioner set out in his Verified Amended Complaint, that that Benzion acting as an agent, and with and by the Authority of the H. A. Seinscheimer Co. of Cincinnati, Ohio, entered into a conspiracy, with others not named under Rule 19 (c) of the Federal Rules of Civil procedure, to have your petitioner arrested, that they acted with malice, and the only purpose was to extort money from your petitioner, that the complaint falls within this section, and damages will lie. (App. P. 5)

II.

The lower Court is presumed to know the law, and should rule on the law, whether such law is presented before them or not. The law is clear that the facts state a cause of action.

We cite the case of: *Monroe* v. *Pape,* 81 S. Ct. 473, 1961.

The District Court for the Northern District of Illinois dismissed the case. The United States Court of Appeals for the Seventh Circuit, 272 F. 2d 365, affirmed and the Supreme Court granted Certiorari.

Mr. Justice Douglas, speaking for the Court, held that allegedly illegal actions of city police officers constitute actions "under color of" state statute within Federal Statute, *making every person* who, under color of any state statute, ordinance, etc. deprives any United States Citizen of his Constitutional Rights liable to the party injured.

It is obvious, that the facts alleged your Petitioner's Verified Amended Complaint are sufficient when proven to grant relief. (App. Pp. 5, 6 and 7)

III.

Now we come to the complaint and the Court held that it did not state a cause of action.

We cite the case of *Dioguardi* v. *Durning*, C.C.A. 2d 1944, 139 F. 2d 774. The case of an immigrant who knew that he was being cheated by the Collector of Customs. He filed his complaint *Pro Se.*

Judge Clark stated:

> "This is obviously a home drawn complaint, but yet it tells a story. Here is just another instance of Judicial Haste which in the long run makes haste."

He went on to say:

> "We think that, however inartistically they may be stated, the plaintiff has disclosed his claims that the collector has converted or otherwise done away with two of his cases of tonics and has sold the rest in a manner incompatible with the public action he had announced, and indeed required * * * . "

Of course the leading case on pleadings is the case of: *Conley* v. *Gibson*, 1957, 78 S. Ct. 99.

A unanimous Court speaking through Justice Black said:

> "In appraising the sufficiency of the complaint we follow of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond all doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

In brief the complaint stated that the Union protected the Whites' jobs better than the Negroes'. The Court said if this could be proven a claim was presented. The union said that the complaint failed to set forth specific facts to support its general allegations of this contention. The Court then said: (App. P. 5)

> "The decisive answer to this rule is that the Federal Rules of Civil Procedure do not require a Claimant to set out in detail the facts upon which he bases his claim.' To the contrary, all the rules require is a short and plain statement of the claim that will give the Defendant fair notice of what the Plaintiff's claim is and grounds upon which it rests. * * * Following the simple guide of Rule 8 (f) that all pleadings shall be so construed as to do substantial justice, we have no doubt that Petitioner's complaint adequately set forth a claim and gave the Respondents fair notice of its basis. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by Counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."

Your Petitioners complaint was dismissed by the lower Court, then it was reinstated. Then it was Ruled that there was good Service. Then with the substitution of attorneys the Court reversed itself on these points, without any legal reason for doing so.

The Petitioner's Verified Amended Complaint, sets out that:

a. A criminal proceeding was begun against the Petitioner without probable cause and with Malice.

b. That the Criminal Proceeding was ended in the Petitioner's favor, and no further action can be brought.

c. That the present respondent caused this action to be brought.

d. The Petitioner suffered damages.

e. That the principal ratified, and adopted, the acts of its agent William Benzion, and the prosecution was continued with their knowledge of all of the circumstances in the case.

Second Amended Verified Complaint follows Court of Appeals ruling in Appendix. (App. P. 5)

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be granted.

Submitted in deference to this Court,

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APPENDIX

APPENDIX

In the

United States Court of Appeals

For the Seventh Circuit

SEPTEMBER TERM, 1964 — APRIL SESSION, 1965

No. 14957

J. L. KAMSLER,
Plaintiff-Appellant,

v.

H. A. SEINSCHEIMER Co. of Cincinnati, Ohio,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

June 24, 1965

Before HASTINGS, *Chief Judge,* and DUFFY and SCHNACKENBERG, *Circuit Judges.*

HASTINGS, *Chief Judge.* Plaintiff Jack L. Kamsler, acting *pro se,* initially brought this action in the United States District Court for the Northern District of Illinois, on behalf of himself, his wife and children, the People of the State of Illinois and the People of the United States of America. H. A. Seinscheimer Co. of Cincinnati, Ohio was named as defendant. Plaintiff sought to recover $20,000,000 in alleged damages resulting from an alleged false arrest, false imprisonment, malicious prosecution and conspiracy.

The original complaint was filed on May 25, 1964. On June 1, 1964, the district court, on its own motion, dismissed the complaint for lack of jurisdiction. On June 8, 1964, plaintiff petitioned the district court to reopen the case, and on June 15, 1964, plaintiff filed a verified amended complaint. Subsequently, the cause was reinstated and the June 1, 1964 order of dismissal was vacated.

On June 16, 1964, defendant filed and presented to the district court a motion to quash the purported service of summons, or in the alternative to dismiss the amended complaint. On the same date, the motion to quash the service of summons was argued and granted.

On June 23, 1964, plaintiff served summons on another purported representative of defendant. On June 30, 1964, defendant again moved to quash the service of this summons, filing the affidavit of the person served in support thereof. No counter-affidavits were filed in opposition. However, on July 16, 1964, the district court denied the motion to quash the service of summons.

The motion to quash filed on June 30, 1964 petitioned for alternative relief seeking to dismiss or strike the amended complaint on the grounds, *inter alia*, that it failed to state a claim against defendant upon which relief could be granted, for failure to allege the existence of a bona fide jurisdictional amount and that plaintiff lacked capacity to sue in the various capacities set forth in his amended complaint, other than in his own behalf.

On August 17, 1964, defendant filed its brief in support of its motion to dismiss the amended complaint. On September 14, 1964, plaintiff filed his answering brief and on September 22, 1964, defendant filed its reply brief.

On September 25, 1964, after hearing oral argument by the parties, the district court granted defendant's motion

to dismiss the amended complaint for the reason that it failed to state a claim upon which relief could be granted. At the same time, judgment was entered dismissing the cause of action and for costs against plaintiff.

On October 14, 1964, plaintiff filed a motion for leave to file a second amended complaint and praying that the dismissal order entered on September 25, 1964 "be withdrawn." On October 30, 1964, the district court denied leave to file a second amended complaint, the motion not being accompanied by a copy of the second amended complaint sought to be filed. The remaining part of the motion was continued for hearing.

On November 3, 1964, plaintiff again moved for leave to file a second amended complaint. This was continued for hearing to November 16, 1964 and then to November 30, 1964.

On November 30, 1964, a hearing was had on plaintiff's motions. No evidence was presented in support of his motion to vacate the order of dismissal. Plaintiff's motions to vacate and for leave to file a second amended complaint were denied.

On or about December 3, 1964, plaintiff again moved to reopen the case, but in the absence of any showing of just cause, the motion was denied.

On December 7, 1964, plaintiff filed his notice of appeal from the order entered on December 3, 1964.

We have set out the foregoing chronology of events in fairness to the district court. It is apparent from the record that the trial court exercised great patience with plaintiff and attempted, in vain, to make clear to him the minimal essentials of his purported claim as the basis for a complaint for damages.

Without particularizing the details, a cursory examination of plaintiff's original and first amended complaints make clear they completely fail to state a claim on which relief could be granted. The district court did not err in so holding.

The district court did not abuse its discretion in denying leave to plaintiff to file a second amended complaint. Further, an examination of the proposed second amended complaint reveals that it is no improvement on its two predecessors.

Questions have been raised on appeal concerning the jurisdiction of the district court, the service of process, the jurisdictional amount and the adequacy of the notice of appeal. We might add, *sua sponte,* the adequacy of plaintiff's brief and appendix. We need not and do not reach or decide these questions.

Plaintiff prosecuted this appeal *pro se,* as it was his right to do. He stated he was a law school graduate but had not been admitted to practice law. His learning in the law was not enough, although he gained considerable experience in the practice of law in this exercise of litigious futility.

We affirm the judgment of the district court in dismissing the action on the grounds that plaintiff's several complaints failed to state a claim upon which relief could be granted and that the trial court did not abuse its discretion in denying leave to file the second amended complaint.

AFFIRMED.

A true Copy:
" Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

SECOND VERIFIED AMENDED COMPLAINT

Now comes, J. L. Kamsler, Plaintiff *Pro Se,* in the above entitled action, and by leave of court files his second amended complaint, for conspiracy to arrest plaintiff, the carrying out of this conspiracy, and for conspiracy to have the plaintiff maliciously imprisoned, and for malicious prosecution. This complaint has two counts.

COUNT I

This count is for conspiracy to have the plaintiff maliciously arrested and imprisoned and the carrying out of this conspiracy.

1. The plaintiff is a citizen of the United States, and the State of Illinois.

2. The Federal Court has jurisdiction in this case based on the 1958 Federal Statute making Diversity of Citizenship with regard to making a corporate party defendant, dependent upon its principal place of business, as well as the State of its incorporation.

3. The defendant corporation is incorporated under the laws of the State of Ohio. It has its principal place of business in Cincinnati, Ohio. This is the nerve center from which it radiates out to its constituent parts, and from which its officers and directors direct, control, and co-ordinate all activities without regard to locale, in the furtherance of the corporate objective.

4. The defendant, thru its agents, officers, and employees of its wholly owned subsidiary Jerrems Store at 11 N. Wabash Avenue in the City of Chicago, State of Illinois County of Cook, as well officers of the Seinscheimer Corporation, and certain Police Officers, and Assistant States Attorneys, and others of said City of Chicago in public office, conspired, connived, and contrived to have the plaintiff without any reasonable or probable cause,

maliciously arrested and imprisoned. The co-conspirators are not named as co-defendants in this case under Rule 19c of the Federal Rules of Civil Proceedure, because this court does not have jurisdiction over them.

5. Jerrems Store at 11 N. Wabash Avenue, Chicago, Illinois, is a wholly owned subsidiary of the H. A. Seinscheimer Co. of Cincinnati, Ohio.

6. William Benzion, Comptroller of Jerrems Store at 11 N. Wabash Ave. in Chicago, Illinois, and a co-signer on the checks of said Jerrems Store, with three officers of the H. A. Seinscheimer Co. on December 31, 1963, with the ratification of the H. A. Seinscheimer Co. went before one associate Judge of the Circuit Court of Cook County, and then and there made statements, without any probable or reasonable cause, falsely and maliciously charged the plaintiff with theft and the commission of this crime, and caused a warrant to be issued for the arrest of the plaintiff.

7. On February 4, 1964 the plaintiff surrendered himself, pursuant to said warrant, signed by William Benzion, and ratified by officers of the H. A. Seinscheimer Co. and their attorneys, issued for his arrest, and was imprisoned during the time that bond was being prepared.

8. The case first came to trial on February 17, 1964, and the State asked for and received a continuance. Four more continuances were asked for by the state until the fourth term had run out. Then on May 22, 1964 this cause coming to be heard before Judge Daniel P. Ryan, associate judge of the Circuit Court of Cook County, Plaintiff being present, over the Plaintiff's objection the cause of action against said plaintiff as a result of this warrant, charging him with theft, and the commission of this crime,

signed by William Benzion and ratified by the H. A. Seinscheimer Co. and their attorneys, was nolle prossed in the felony court of Cook County.

Because of the Conspiracy to have the plaintiff maliciously arrested, and the carrying out of this conspiracy, which was vicious, wanton, and vexacious, by William Benzion and H. A. Seinscheimer Co. the plaintiff has been damaged among other ways in the following manner:

> That, by reason of the premises, plaintiff was and is, greatly injured in his good name, credit and reputation, and brought into public disgrace, infamy and scandal among his neighbors and other worthy citizens of the State of Illinois, and other States, some of whom, not knowing his innocence, have believed or suspected, and still believe and suspect that plaintiff was guilty of Theft, and Larceny in violation of the Criminal Code of the State of Illinois; and plaintiff caused to, and did suffer great mental anguish, as well as his family, and pain of body and mind for a long time, as well as healthwise, and was obliged to, and did pay out large sums of money, to wit about $8,500.00 in defending himself, and manifesting his innocence of, said charges, and was greatly hindered from following and transacting his affairs and business for a long long time all to plaintiff's damage.

Wherefore: Plaintiff demands a malice judgment against the defendant in the amount of $10,000,000.00 and his costs, and punitive damages in the amount of $10,000,000.00.

COUNT II

This count is for malicious prosecution, and the Federal Court has Jurisdiction for the same reasons as given in Count I, of this complaint.

1. The Plaintiff realleges Paragraph No. 1 of Count I.

2. The Plaintiff realleges Paragraph No. 2 of Count I.

3. The Plaintiff realleges Paragraph No. 3 of Count I.

4. The Plaintiff realleges Paragraph No. 4 of Count I.

5. That on December 31, 1964, in the City of Chicago County, State of Illinois, well knowing the premises, and maliciously contriving and intending to injure plaintiff in his good name, credit, and fame, to bring him into public disgrace, infamy and scandal, and to cause him to be imprisoned a long long time, and thereby to impoverish, oppress, and ruin him, defendant H. A. Seinscheimer ratifying the acts of their agent, and employee William Benzion, went and appeared before one Associate Judge Daniel P. Ryan of the Circuit Court of Cook County, of the State of Illinois, and then and there falsely, maliciously, and without probable cause or reasonable cause, charged plaintiff with theft, and the commission of this crime.

6. That upon false charge, defendant then and there falsely, maliciously and without any probable cause or reasonable cause, procured said Judge Daniel P. Ryan to make and issue a certain warrant, under his hand, for apprehending the plaintiff and bringing him before him, said Judge Daniel P. Ryan Associate Judge of the Circuit Court of Cook County, State of Illinois to be dealt with according to law for said supposed offense.

7. That thereafter on February 4, 1964, under and by virtue of said warrant, defendant falsely, maliciously, unjustly, and wrongfully, and without any probable or reasonable cause, procured plaintiff to be arrested by his body and to be imprisoned.

8. That with intent to injure plaintiff as aforesaid, and without any probable cause or reasonable cause, defendant then and there procured plaintiff to be held under special bond to appear before said Court and Judge Daniel P. Ryan or any other Judge sitting in his place, to be examined touching and concerning said offense.

9. That on May 22, 1964 said charge coming on to be heard before associate Judge Daniel P. Ryan of the Circuit Court of the State of Illinois, County of Cook, plaintiff being present, over the plaintiff's objection permitted the State to Nolle Prosse the complaint, and it was determined that plaintiff was not guilty of said supposed offense, and thereupon caused him to be discharged out of custody and fully acquitted thereof.

10. That defendant has not further prosecuted its said complaint, but has abandoned the cause, and said complaint and prosecution are wholly ended and determined.

11. That by reason of the premises, plaintiff was and is greatly injured to his credit, reputation and circumstances, and was brought into public disgrace, infamy and scandal among and with all of neighbors, and other worthy citizens of this state and other states, some of whom, not knowing his innocence, believed or suspected, and still believe or suspect, that he was, and is, guilty of theft and larceny; and plaintiff was also caused to, and did suffer great anxiety and pain of body and mind, and health, as well as his family, and was obliged to, and did expend large sums of money to wit: $8,500.00; and was greatly hindered in about procuring his discharge from said imprisonment and manifesting his innocence of said charges; and was greatly hindered and prevented from attending, following, and transacting his affairs, and business for a long long time.

Wherefore: Plaintiff demands a malice judgment against said defendant in the amount of $10,000,000.00 and his costs, and Punitive damages in the amount of $10,000,000.00.

Jack L. Kamsler
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AFFIDAVIT

I, Jack l. Kamsler, after first being duly sworn on oath depose and say:

That my age is legal years, and my residenee Chicago, Ill. that I have read the foregoing complaint, have full knowledge of the facts, and that they are true in their entirety, and that I stand ready to prove them all, beyond any reasonable doubt to both the Court and Jury.

Jack L. Kamsler
Jack L. Kamsler *Pro Se*
20 E. Jackson Blvd.
Phone 427-2630
Chicago, Ill. 60604.

Subscribed and sworn to before me this 17th day of November 1964.

.....
Notary Public.

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In the

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October Term, 1965

J. L. KAMSLER,

Petitioner,

vs.

H. A. SEINSHEIMER CO. of Cincinnati, Ohio,

Respondent.

BRIEF FOR RESPONDENT H. A. SEINSHEIMER CO. IN OPPOSITION TO CERTIORARI.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 351

J. L. KAMSLER,

Petitioner,

vs.

H. A. SEINSHEIMER CO. of Cincinnati, Ohio,

Respondent.

BRIEF IN OPPOSITION TO CERTIORARI.

REASONS FOR DENYING THE WRIT.

The decision rendered by the Court of Appeals for the Seventh Circuit in the case at bar is not in conflict with any decision on the same matter rendered by any other Court of Appeals. Although the petitioner herein asserts the contrary, no authority whatsoever is cited by the petitioner which in any way reveals such a conflict. Likewise, the Court of Appeals for the Seventh Circuit has not decided any federal question in a way which is in conflict with the applicable decisions of this Honorable Court, and petitioner has cited absolutely no authority to show otherwise. We respectfully submit that the decision of the Court of Appeals in the case at bar is absolutely correct and proper.

Although Kamsler's petition for writ of certiorari is some improvement over his prior briefs, his petition still is not free from burdensome, irrelevant, immaterial, and scandalous matter. A perusal of Kamsler's petition clearly manifests this fact.

On page two of the Petition, four questions are presented. None of the questions are material however. The fact is that the District Court *did* take jurisdiction of the case (although the defendant respectfully asserts that it should not have done so). The diversity of the citizenship between the plaintiff and the defendant in this action was never disputed. Secondly, petitioner never did base jurisdiction of this matter on Section 1343 of Title 28, United States Code. Even if he had, however, such an attempt would have been futile inasmuch as this particular case would not fall within the meaning of that Section. Petitioner further contends that the trial court's "hasty decisions" constitutes an additional issue. The opinion rendered by the Court of Appeals for the Seventh Circuit clearly refutes any notion that the trial court made hasty decisions. Painstaking consideration was given to this case by the trial court. As the decision of the Court of Appeals makes clear, the trial court held numerous hearings, required the filing of extensive briefs, and consumed almost six months before terminating this outrageous proceeding. Finally, no legitimate issue is presented regarding any failure of the trial court to follow "the accepted rules of pleading of federal civil procedure". Petitioner has been unable to point out one single rule which in any way could be said to have been violated by the trial court.

The "Statement of the Case", contained on page three of the Petition, requires little comment. Petitioner's statement is based almost entirely on matters *de hors* the rec-

ord. This case was disposed of on the pleadings—not on the substantive matters alleged. Accordingly, the contents of petitioner's Statement are immaterial.

That Kamsler's Petition is another "exercise of litigious futility" is clearly manifested upon a casual reading of his "Reasons for Granting Writ". Although three purported reasons are stated, they are unsupported by any relevant authority whatsoever. Furthermore, the reasons are taken from old rule 38—a revision of that rule being now contained in Rule 19.

Petitioner now attempts, for the first time in this litigation, to base the trial court's jurisdiction on 28 U.S.C.A. § 1343. Neither this section nor 42 U.S.C.A. 1983 nor 42 U.S.C.A. 1985 were ever alleged in any of petitioner's pleadings, including his proposed second amended complaint. Plaintiff cites the case of *Monroe* v. *Pape,* 365 U.S. 167 (1961), but the applicability of that case to the facts in the case at bar is non-existent. The *Monroe* case involved the deprivation of an individual's rights by police officers acting "under color of law". It did not involve the alleged deprivation of one individual's rights by another individual. In any event, the various complaints filed by the petitioner in the trial court were never dismissed on the ground that the District Court did not have jurisdiction over the matter. Petitioner's original and first amended complaints were dismissed because they failed to state a claim upon which relief could be granted. From these rulings of the District Court the petitioner never appealed.

Although it is not clear, the petitioner apparently did appeal from that ruling of the District Court which denied leave to file a third, or second amended, complaint. It is of course well established that the matter of deter-

mining the propriety of amendments "not of course" brings into play the District Court's discretionary power. Yet the petitioner has given absolutely no reason why the District Court should not have denied his motion to file a second amended complaint. The ruling of the Court was discretionary and it is respectfully submitted there was no abuse of discretion. Petitioner's original proposed second amended complaint not only was substantively and grammatically defective, but it contained red and blue trimmings which of course are not reflected in the printed exhibit to plaintiff's petition. In any event, petitioner has failed to set forth how the District Court abused its discretion. The decision of the Court of Appeals in affirming the District Court was correct and proper.

Although other questions raised on appeal concerning the jurisdiction of the District Court, the service of summons, the jurisdictional amount, the adequacy of the notice of appeal, and the adequacy of plaintiff's brief and appendix, were not reached or decided by the Court of Appeals, we respectfully submit that a decision on any of these questions would ultimately have resulted in the Court of Appeals affirming the decision of the District Court. Petitioner's notice of appeal to the Court of Appeals was entirely defective, confusing, and incomprehensible. It was impossible to determine just what it was that Kamsler was appealing from. Furthermore the plaintiff's brief and appendix completely disregarded and violated the rules of the Court of Appeals for the Seventh Circuit and, in particular, their rules numbered 16(d) & (c) and 17(a). It is further submitted that Kamsler's claim for $20,000,000 was absurd and certainly not made in good faith. Finally, it is our belief that the District Court did not have personal jurisdiction over the defendant for the reason that summons was served upon an individual who was not, and never had been, an officer, managing or general agent, or

employee of the defendant, H. A. Seinsheimer Co. In any event, it was unnecessary for the Court of Appeals to pass upon these issues. The inadequacy of petitioner's proposed second verified amended complaint is abundantly evident on its face.

CONCLUSION.

It is respectfully submitted that the Petition for Certiorari should be denied. No special or important reasons have been given by the petitioner for the granting thereof. No conflict between the decision of the Court of Appeals for the Seventh Circuit and any other decision has been shown. Petitioner has completely failed to show how his original and first amended complaints stated a claim upon which relief could be granted. Likewise, petitioner failed to show that the District Court abused its discretion in denying him leave to file his proposed second amended, or third, complaint. The decision of the Court of Appeals for the Seventh Circuit was correct and we respectfully request that this Petition for Certiorari be denied.

Respectfully submitted,

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No. 361

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

J. L. KAMSLER,

Petitioner,

vs.

H. A. SEINSCHEIMER CO. of Cincinnati, Ohio,

Respondent.

Petitioner's Reply Brief

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 351

J. L. KAMSLER,

Petitioner,

vs.

H. A. SEINSCHEIMER CO. of Cincinnati, Ohio,

Respondent.

Petitioner's Reply Brief

To The Honorable Justices Of The Supreme Court:

Your Petitioner, readily admits, that he is not as artistic in the matter of pleadings as the powerful law firm of Kirkland, Fleming et al, but the rules and laws as set down by the Supreme Court state:

> *That pleadings should be looked upon to do substantial justice.*

In the words of former Justice Hughes:

> *The Supreme Court and the Courts of Appeal will take care of themselves: It is the Courts of the poor*

most in need of justice. Indifference to their needs lies disaster.

When the Respondent has to resort to picking flaws in grammar, and the artisticness which a brief is drawn it is obvious that they have no defense.

The Respondent states there never was a question about *Diversity of Citizenship or Federal Jurisdiction,* p. 2. This is news to your Petitioner. There were several motions on each, and one day the court would rule one way, and the next time another, as will be seen by the opinion of the Court of Appeals in the Petitioner's Appendix, pp. 1-4. While on the subject of the thinking of the Court of Appeals, we disagree and do not feel that the lower court was patient, but on the contrary attempted to make the Petitioner give up the chase on several occasions, and when this failed, did all in their power to confuse the record, so that an appeal would be most difficult.

The lower Court at one time did rule that there was Diversity of Citizenship, and that there was Federal Jurisdiction. But, then they permitted the Respondent to place another motion on file and attempt to *prove their case on motion,* when a Jury had been asked for, and *deny the Petitioner his day in Court.* Now the Respondent states that he still does not know exactly what the Petitioner is Appealing from, p. 3. Let us add that your Petitioner never was sure of what was going on, and appealed merely on the basis of the ruling of the Court that the Case was dismissed. No reason was given, other than orally the Judge stated that he felt that the Petitioner was going to harass the witnesses.

If it is true what the Respondent states, that there is *Diversity of Citizenship,* and that the *Federal Court has jurisdiction,* then the only point to consider is the validity

of the Second Verified Amended Complaint, and whether the facts stated in it, if proven would grant your Petitioner relief.

The Respondent also mentions the original complaint and the First Amended Complaint, p. 3. These were never mentioned, had no bearing on his brief and they should be considered *Moot,* even though it is possible they may comply with Rule 8(a) and 8(f) of the Federal Rules of Civil Procedure, *as pointed out in Petitioner's Brief* p. 4.

The Respondent, p. 3, also makes mention that your Petitioner never mentioned Title 28, Section 1343 before. This was brought up both in oral argument in the lower court and in the Court of Appeals.

The Respondent also mentions that this Section does not apply as it only applies to Police Officers. If the Respondent would take the time to read this section he would find that it reads, and the Supreme Court so Ruled in the *Monroe* v. *Pape,* 81 S. Ct. 473, p. 6, of Petitioner's Brief, "*Any Person Acting under color of Law.*"

In Considering the Complaint it is valid under Supreme Court Rules as cited in our brief, pp. 7 to 8.

It definitely gives the Respondent notice as to what the complaint is about and what to expect. It states facts, and damages, that when proven will render a decision for the Petitioner.

The Respondent has stated that the Petitioner's Brief completely disregarded the rules of the Seventh Circuit, p. 4.

Speaking of things and statements that *de hors* the record, these certainly apply. Such matters are not before the court, and it is far too late for the Respondent to challenge them. Had the Respondent read the Brief carefully, or had something else for his defense he would not have mentioned that the Petitioner has failed to set out any reasons whereby the Court of Appeals acted in Conflict with other decisions. It is unnecessary to repeat, so we will just call the Honorable Court's attention to pages 5-8 of Petitioner's brief.

Now comes the ridiculous statement of the Respondent, to again show a lack of legitimate defense, by stating the Reasons for the Petition are not under Rule 38, p. 3, as stated in the Petitioner's Brief but is now Rule 19. We admit the new Rule is 19, but the reasons for requesting a writ of Certiorari are still the same. However, we call the Respondent's attention to the fact that we are not obligated to cite the Rule Number, but merely the reasons.

CONCLUSION

The Respondent has presented a brief, which is typical of the law firm of Kirkland, Fleming, et al, that where they are defenseless, they seek an out through technical pleadings, and this type of defense is frowned upon by the Supreme Court. Pleadings are to be considered to do substantial justice, and your Petitioner has a Verified Complaint that withstands all the technical challenges that the Respondent has thrown at it, because regardless of his wild accusations, the complaint is there, verified, and the facts when proven, will grant the Petitioner relief. So, without going into more reasoning, which will only confuse the record more, which is what the Respondent would like

to do, we say, that the Respondent's brief has given us no reason why the Supreme Court should change its Thinking, Rules and Law in that Pleadings Should be Interpreted to do Substantial Justice, and that in view of the foregoing the Petition for the Writ of Certiorari should be granted.

Submitted In Deference To This Honorable Tribunal.

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END